THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.17229 OF 2005

DATED: 12-08-2005

BETWEEN;

Dumavathu Sonibai Wife of Seva Nayak,BrundavanamTanda village,Prakasam district.

..PETITIONER

VS.

The Joint Collector,(CivilSupplies) Prakasam District and two others.

..RESPONDENTS

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.17229 OF 2005

ORAL ORDER

Heard the learned counsel for the petitioner, learned Government Pleader for Civil Supplies and Mrs. P.Radhika learned counsel for the 3rd respondent.

The petitioner, assails the order of the 2nd respondent dated 02-07-2005 appointing the 3rd respondent as a fair price shop dealer of Pulipadu village, Mundloamuru Mandal, Prakasam District in preference to the petitioner as well as the appellate

order of the 1st respondent dated 27-07-2005 rejecting the petitioner's appeal against the appointment of the 3rd respondent by the 2nd respondent.

The brief facts of the case are that the petitioner was appointed as a temporary fair price shop dealer of the village on 17-03-1999. While so, the 2nd respondent issued a notification on 07-05-2005 calling for applications to fill up the vacancy on regular basis. The petitioner, 3rd respondent and others applied pursuant to the notification. At the selection, the 2nd respondent found the 3rd respondent eligible, qualified and better suited and accordingly by the orders dated 02-07-2005 authorized the 3rd respondent to the regular vacancy of the fair price shop in the village. Aggrieved thereby, the petitioner preferred an appeal to the 1st respondent. The 1st respondent substantively rejected the appeal on the ground that " since, the temporary dealer has no locus standi, her petition need not be admitted." After recording the above reason for rejection of the petitioner's appeal, the 1st respondent referred the matter back to the 2nd respondent for re-examination of the selection of the appropriate candidate.

While challenging the 1st respondent's rejection of her appeal, the petitioner also assails the proceedings dated 02-07-2005 of the 2nd respondent authorizing the 3rd respondent as the fair price shop dealer of the village. In her appeal to the 1st respondent, the petitioner raised a number of grounds against the appointment of the 3rd respondent. No doubt, the petitioner was a temporary fair price shop dealer, but that status of being a temporary authorisee did not disentitle the petitioner to apply and be considered for the regular vacancy. In fact, her candidature was also considered, though the 3rd respondent was preferred by the 2nd respondent. As an applicant, the petitioner is an aggrieved person by the appointment of the 3rd respondent. Whether her grievance with regard to appointment of the 3rd respondent is valid and whether grounds germane to the consideration of her appeal exist are all issues, which require to be considered by the 1st respondent. By the mere fact of being a temporary fair price shop dealer, the petitioner does not lose all litigative rights, nor is she prevented to canvas or ventilate her grievance. In appeal the reasoning given by the 1st respondent for rejecting the petitioner's appeal namely that she was a temporary fair price shop dealer is perverse, misconceived and

requires invalidation. The 1st respondent's order dated 27-07-2005 is accordingly set aside.

As the grounds urged by the petitioner to canvas the validity of the authorization in favour of the 3rd respondent are more appropriately considered in an appeal than in judicial review, this Court does not consider it appropriate to consider the petitioner's challenge to the 2nd respondent proceedings dated 02-07-2005 appointing the 3rd respondent as a fair price shop dealer. This aspect of the matter requires to be considered by the 1st respondent in the appeal. As the order of the 1st respondent dated 27-07-2005 is set aside herein, the appeal stands restored to file and the 1st respondent is directed to consider the appeal of the petitioner on merits and record reasons for the decision. The 1st respondent is directed, in the totality of the circumstances, to consider the petitioner's appeal against the orders of the 2nd respondent dated 02-07-2005 expeditiously and in any event within a period of two (2) weeks from the date of receipt of a copy of this Order. The reasons for the decision of 1st respondent shall be communicated to the petitioner within the aforesaid time without demur or default. Nothing in this Order shall be construed as an expression by this Court on the merits of the petitioner's appeal and the same would be considered by the 1st respondent on its own merits and after recording reasons. It may perhaps be necessary to observe that the 1st respondent is required to hear the 3rd respondent or consider any objections or submissions of the 3rd respondent while disposing of the petitioner's appeal.

Accordingly, the writ petition is disposed of. No order as to costs.

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GODA RAGHURAM,J

12TH AUGUST,2005

Note:

Issue CC on priority basis.

(B/O)

***TSNR**